

NATIONAL DEFENSE UNIVERSITY

NATIONAL WAR COLLEGE

**ADVICE AND CONSENT, AND US FOREIGN POLICY; THE GAP BETWEEN
CONSULTATION AND MISCALCULATION**

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“The President...shall have power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur...”

“The Congress shall have power to provide for the common defense...to regulate commerce with foreign nations...to declare war...”

“The President shall be the Commander in Chief of the Army and Navy of the United States...”

The Constitution of the United States

The framers of our constitution intentionally gave powers to each branch of government so that no single branch could establish autocracy over the others. This separation of powers provided a system of “checks and balances” that guaranteed “power parity.” One of the most insightful commentaries on the separation of powers was offered by Justice Brandeis in the 1926 Myers case in which he said:

“The doctrine of the separation of powers was adopted by the Convention of 1787 not to promote efficiency, but to preclude the exercise of arbitrary power. The purpose was not to avoid friction but, by means of the inevitable friction incident in the distribution of the governmental powers among the three Departments, to save the people from autocracy.”¹

During the constitutional convention of 1787, the framers agreed that:

“...an Executive needed to be strong enough to supply “energy” to the government, and to act as some kind of check on the legislature. At the same time, we needed an executive whose powers were sufficiently limited so that he could not turn himself into a tyrant.” ²

Further, as noted in Montesquieu’s *L’Esprit des Lois*,

*“...Miserable indeed would be the case, were the same man, or the same body, whether of the nobles or of the people, to exercise those three powers, that of enacting laws, that of executing the public resolutions, and that of judging crimes or differences of individuals.”*³

Congress is given the power to declare war; the President and the Senate are given the power to make peace by treaty. But on the subject of neutrality the Constitution is silent. It is also silent on the subject of abrogating treaties, as it is in recognition of new governments and on the establishment of international agreements short of treaties. These overlaps and gaps compel the Executive and Legislative to collaborate and consult with each other. What has been the result?

CONSULTATION; AN “INAUSPICIOUS” BEGINNING

Early in his first term, President George Washington visited the Senate chamber (a surprise to the senators) with his Secretary of War. He bluntly stated that he called on the Senate for their advice and consent to some propositions in the treaty that the government had negotiated with the Southern Indians. The propositions were listed on paper and

briefly presented. Senator Morris moved that the paper be referred to a committee of five, which would report as soon thereafter as possible. The President rose and said, “This defeats every purpose of my coming here!” After a brief period of silent waiting, the President left enraged. Upon exiting the Senate chamber he stated, “I’ll be damned if I ever come here again!”⁴

To the Senators, the President’s actions amounted to “treading on their necks.” In their view, review of the treaty propositions in committee – without the presence of the President – was necessary to offer an impartial consideration of the proposals. As this anecdote suggests, consultation by the Executive with the Legislative had a “rocky” start. Not surprisingly, we have not made much improvement since then.

CONGRESSIONAL OR PRESIDENTIAL GOVERNMENT; DIFFERENT TIMES, DIFFERENT STYLES

From George Washington to Bill Clinton, every president has struggled to establish the Executive’s primacy over the Legislative branch in order to form and conduct foreign policy. Indeed, our founders’ fear of autocracy heavily influenced the very foundation of our government.

After declaring independence, the Congress conducted war, governed, and eventually approved the Articles of Confederation, all without a chief executive. By 1787, however, the Confederation was in crisis, particularly in foreign affairs. Congress had the power to make treaties, but did not have the power to make state legislatures honor them.

Likewise, Congress authorized foreign trade but could not regulate it. It was the desire to

end such political immobility and to create a more efficient government that resulted in the Constitutional Convention.

During the first 40 years of the Federal government, Congress delegated and otherwise “allowed” broad powers to the President and the precedent of “Presidential government” was set. Washington, Adams, and Jefferson all withheld treaty information, consulted with Congress sporadically, and used military force without the consent of Congress. The refusal to provide information on the Jay Treaty, Washington’s Whiskey Rebellion, Adam’s “quasi-war” with France, and Jefferson’s “defensive” actions on the Barbary States all serve as examples.⁵

James Madison’s administration brought “Congressional government” back to the fore. He believed that “the right to determine the foreign policy of the United States devolves on Congress by virtue of its power to declare war, and that the powers of the President in the diplomatic sphere are instrumental only, or involve at most no greater range of discretion than the determination of matters of fact.”⁶

The strength of Lincoln and circumstances of the Civil War led to an Executive – Legislative relationship dominated by the President. But, after the war and Lincoln’s death, the “Congressional government” once again predominated and featured a particularly powerful Chairman of the Senate Committee on Foreign Relations, Senator Sumner.

Woodrow Wilson influenced a return to “Presidential government.” He argued that Congress was neither predictable nor accountable, that power was diffused, and that governing by committee was ineffective in dealing with foreign affairs. A lack of

consultation and Wilson's miscalculation of the Senate led to the US rejection of the League of Nations, and marked the turn toward "Congressional government" once again.⁷

Congress continued to heavily influence foreign affairs during the post-W.W. I time due in part to isolationist tendencies as a reaction to war. This changed in 1940 with America's entry into W.W. II, and FDR's Executive powers expanded in a manner unparalleled since 1861.

Since W.W. II, three administrations stand apart as examples of balanced power in foreign affairs as achieved in frequent consultation with Congress by the Chief Executive. Eisenhower's decision not to intervene into Dien Bien Phu in 1954, Johnson's initiatives resulting in the 1964 Gulf of Tonkin Resolution, and Bush's 1990 Joint Resolution regarding the Gulf War were all examples of effective Executive-Legislative "partnership" in foreign affairs.⁷

What does this all mean? In short, it means that the constitution's separation of powers provides the capacity for different branches of government to assert their prerogatives in the conduct of foreign affairs. Change is fundamental to this system. We have frequent elections and appointments which put people into constantly changing relationships with others. With each change, legislators, diplomats, and presidents pursue their perceived obligations and interests. In this dynamic, we should *expect* friction, but we should *work toward cooperation*. As we have seen, some administrations are very successful in conducting foreign affairs, and the Congress assumes – by choice – a lesser role. In other administrations, the Congress takes a more assertive role, but U.S. foreign affairs remains effective. What is important is not who asserts themselves, but rather the

relationship that develops where there is no unfilled “gap” between consultation, and insufficient communication that leads to miscalculation.

But what about today? What is the state of our foreign affairs? The Clinton administration has had some successes in foreign affairs. The Middle East peace talks, Northern Ireland negotiations, and recent improved relations with North Korea have certainly served to reduce international tension. **However, much of US foreign policy is plagued by a lack of strategic direction, lack of communication, ineffective consultation, and after-embarrassment consensus building. Although the constitution compels both the executive and legislative branches of government to consult with each other, it is the executive who must ensure sufficient consultation in foreign policy matters.** The problems the current administration is experiencing can be illustrated by the examples of US involvement in the Somalia humanitarian operation and the ratification of the Comprehensive Test Ban Treaty (CTBT).

HUMANITARIAN OPERATIONS IN SOMALIA; TEST CASE GONE “BAD”

In 1991, a popular uprising drove Somalia’s President Siad Barre into exile. Rival clans struggled with each other to fill the resulting power vacuum. With no clan able to emerge victorious, the fractious society fell into anarchy. The economy collapsed. Food distribution essentially ended and several hundred thousand Somalis starved to death. The catastrophe came to the attention of the broader international community and inspired UN action.⁸

In December 1991, outgoing UN Secretary General Javier Perez de Cuellar announced his intention to launch a UN peace process in Somalia. The two most prominent faction leaders, General Mohamed Farah Aideed and Mr. Ali Mahdi, signed a cease fire agreement the following March. The Security Council quickly adopted a resolution establishing the first United Nations Operation in Somalia (UNOSOM I). Its purpose was to provide for the safe delivery of humanitarian supplies to Somalia's famine-stricken population. However, violence and famine continued to escalate. A dramatic increase of media reporting of continuing famine and UN "bungling" of token relief efforts prompted the U.S. to step forward in November of 1992, announcing to the UN its intention to provide assistance.⁹ This decision was the product of significant consultation with Congress by the Bush administration. The Security Council adopted Resolution 794 authorizing a U.S.-led coalition to use force to provide a secure environment for the distribution of humanitarian aid in Somalia.

The first elements of U.S. Marines that formed the bulk of the 37,000-strong Unified Task Force (UNITAF) landed on a beach at Mogadishu in 1992, thereby beginning Operation Restore Hope. UNITAF's mission was to enforce peace by using "all necessary means to establish as soon as possible a secure environment for humanitarian relief operations in Somalia."¹⁰ This was the first-ever UN sanction for the use of force to ensure the delivery of humanitarian relief. The situation quickly stabilized. Food distribution resumed, violence diminished, and in January 1993, the warring faction leaders reached an agreement for general disarmament.

UN Secretary-General Boutros Boutros-Ghali, proposed that another United Nations Operation in Somalia (UNOSOM II) follow UNITAF subsequent to its redeployment.

The Security Council adopted Resolution 814, which approved the Secretary's proposal. UNISOM II's task was to monitor the humanitarian relief effort, disarm all unauthorized militia, protect NGO personnel, clear mines, repatriate refugees, and prevent conflict from arising.¹¹

UNITAF ended its successful operation and redeployed from Somalia in May 1993. With Admiral Jonathon Howe directing UNOSOM II, a total disarmament policy was put into effect. It soon led to a return of violence and instability which threatened the mission.¹²

From humanitarian relief to “man hunt”

Frustrated by the methods the UNOSOM II troops were using to conduct disarmament; Somalis killed 24 Pakistani soldiers in an ambush on 5 June 1993. It marked an escalation of violence, and a turning point in the relief operation. With the adoption of UN Resolution 837, the Security Council condemned the killing and authorized action against the perpetrators. In the next few months UNOSOM II forces – including U.S. troops – conducted a “man hunt” for Aideed, who was implicated as the perpetrator of the ambush on the Pakistanis. A warrant for his arrest was issued, and a reward offered for his capture. Increased violence ensued as multiple attempts to capture Aideed failed. Howe’s attempts to criminalize Aideed in the eyes of Somalis also failed. This all came to a “head” on 3 October 1993 when U.S. Rangers and Delta Force troops incurred 18 dead and 75 wounded during one such attempt at capture, and film footage showed a dead U.S. soldier being dragged by Somalis through the streets of Mogadishu.

Domestic and international politics; pressure to “get out”

Although U.S. support for the relief effort was strong initially, it began to wane during the spring of 1993. During 1991 and 1992 the media reported the Somali famine and showed us vivid pictures of starving people, which brought about American public opinion to call for action. The U.S. did act – with the full support of Congress – and the operation was successful. Leaving a small “Quick Reaction Force” in support of UNOSOM II, UNITAF departed in May 1993.

Almost immediately, the media began to report the ineptness of UNISOM II. In Somalia, four journalists were killed on 14 July 1993, and four U.S. soldiers were killed there on 8 August. In an attempt to “bag” Aideed on 30 August, U.S. Rangers instead

captured UN aid officials.¹³ Many of the capture attempts resulted in loss of innocent Somali lives. Mounting public concern prompted Congress to speak out. Hearing of the journalists' death, Senator Robert Byrd said of our forces in support of UNOSOM II, "We should pack up and go home!"¹⁴ These events led to hearings conducted by both the House of Representatives Committee on Foreign Affairs and the Senate Foreign Relations Committee. Legislators' frustrations can be summed up in Senator Jesse Helm's statement:

"...before I pledged my support [for Operation Restore Hope], I made sure of two things: (1) that we had a specific and achievable goal; and (2) that we would not commit our military men and women to a combat role under foreign command. I was assured that our goal was clear; to secure the delivery of relief and sustenance ...Technically, the U.S. operation ended in May of this year after our forces achieved what they set out to do. But the fact remains that we still have 4,000 men and women serving in Somalia in a mission that is open-ended. The bulk of that force is serving under a foreign command without the authorization of Congress."¹⁵

So, months after the departure of UNITAF passed before Congress began to get answers on the changed nature of U.S. military support to the UN. The senate's frustration was revealed by its refusal to act on the 25 May 1993 Senate Joint Resolution, which would have authorized the continued deployment of U.S. forces in Somalia for another 12 months.

As criticism of U.S. policy grew, both houses of Congress passed a non-binding resolution in September calling for the President to report on his Somalia policy by 15 October and to seek congressional authorization for continuing the operation by 15 November.¹⁶ Subsequent to the 3 October battle in Mogadishu, Senator Byrd threatened to amend an appropriations bill with a fixed date to pullout all U.S. forces.¹⁷

Along with the press and Congress, former President Jimmy Carter contributed to the pressure on President Clinton. During the summer of 1993, Carter worried that the UN policy in Somalia was confused and misdirected. Both the President of Ethiopia and President of Eritrea appealed to Carter to try to change the focus on political goals instead of chasing Aideed.¹⁸ In early September, Carter received a letter from Aideed pleading for help to avert a disaster in Somalia. Further, Aideed indicated that he was willing to accept an independent commission to analyze the allegations against him, and that he would comply with their findings. On 13 September, Carter met with Clinton, encouraging him to stop emphasizing the hunt for Aideed and proceed with a political solution. Carter also met with Secretary of State Warren Christopher to relay the same message. Subsequently, both Christopher and Clinton agreed that a political solution should replace the military emphasis.¹⁹ On 20 September, Christopher personally presented a “non-paper” – an informal memorandum – explaining this view to the UN Secretary-General. Boutros-Ghali was unpersuaded.²⁰

Aside from domestic pressures to pull out of Somalia, President Clinton felt pressure internationally. When the arrest warrant was issued on Aideed, the Italian, French, Mozambique, and other governments announced that they would not participate in a “man hunt.” Increasingly, it was Task Force Ranger and Delta Force (recently introduced into theater) conducted the preponderance of the capture effort. This was not the original response force mission for the U.S. troops under the UNOSOM II mandate. Reports of U.S. capture operations, combined with the refusal of foreign governments to allow their troops to participate, further fueled the American public and Congress’ concerns.²¹

Ultimately, the pressure on President Clinton to change his policy came to a climax on 5 October; two days after U.S. troops suffered heavy casualties in the streets of Mogadishu. Answering a political firestorm on Capitol Hill, Clinton sent Secretary of State Christopher, Secretary of Defense Les Aspin, and National Security Advisor Tony Lake to answer Congress' concerns about U.S. foreign policy. The result was disastrous. Christopher, Aspin, and Lake were besieged by skeptical lawmakers who scorched them with demands for a clear road map for an exit from Somalia, and scolded them for their inability to articulate U.S. policy and goals.²² But this was not an easy decision for President Clinton to make. There were important considerations that suggested the U.S. should continue its support of the UN mission.

Statecraft and foreign policy; pressure to “stay the course”

After the Cold War, President Bush envisioned a world where disagreement between Nation-States could be accomplished through international organizations, and conflict could be resolved through the collective effort of coalitions. Indeed, with the disintegration of the Soviet Union, the UN became a cooperative organization of action instead of a forum of confrontation between the Soviets and Americans. Somalia, in many respects was a test case for the UN, and the commitment of U.S. forces there would set a precedent for the “New World order.” Bush was fully committed, and initiated U.S. action to support the UN in Somalia. When Bill Clinton won the presidential election, he “stayed the course.” Criticized for his lack of foreign policy experience during the campaign, there was considerable incentive for President Clinton to make U.S.

involvement in Somalia a success. Certainly President was well aware of the effect the American hostages in Iran had on the re-election campaign of the last Democratic President. Observing the ugly scene of a soldier held hostage in Mogadishu, he knew that his decision on Somalia would be pivotal for his presidency.

Complicating President Clinton's policy decisions on Somalia was the dilemma of balancing American public opinion, national interests, and cooperation with the UN. With escalating calls at home to get out of Somalia, the President had to consider the consequences of a failed UN operation there. If the new and cooperative environment in the UN was to be the lynchpin for collective resolution of the world's problems, a failure in Somalia risked UN credibility. If the U.S. withdrew its support from UNOSOM II, what would the UN members believe about U.S. commitment to any future UN mission?

As the pressure to change policy on Somalia mounted during September 1993, Admiral Howe painted a very positive picture of UNOSOM II's achievements and defended its use-of-force tactic during press conferences. In addition, the Security Council unanimously adopted Resolution 865, which reaffirmed policy in Somalia, praised UNOSOM II's achievements, and announced a Somali election target date of March 1995. Both Howe's and the Security Council's position reinforced Secretary-General Boutros-Ghali's strong rebuttal to Secretary Christopher's September "non-paper" suggesting a policy change and plainly signaled that the Secretary-General was entrenched. He warned that without the support of the U.S., UNOSOM II would fail.²³ His warning not only sent a message to President Clinton, it also served to alarm humanitarian aid organizations working in Somalia, which brought additional pressure on the administration to "stay the course."

Most of President Clinton's principal advisors also supported continued participation in UNOSOM II. Defense Secretary Aspin, Chairman of the Joint Chiefs of Staff General Colin Powell, and Ambassador to the UN Madeleine Albright all defended the U.S. role, and encouraged the President to persevere. During an August 1993 speech, Aspin defended the administration's policy saying, "We went there to save a people, and we succeeded. We are staying there now to help those same people rebuild their nation."²⁴ Before the National Press Club on 28 September, General Powell remarked, "We will have to continue our calculus of political objectives, means applied to those objectives, and sort them out. But because things get difficult, you don't cut and run."²⁵ At the UN, Ambassador Albright cast "yes" votes on each of the Somalia Resolutions, and held strong convictions that the UN had emerged as an important means of conducting foreign policy. Finally, she emphasized the imperative of U.S. leadership of, and cooperation with, the UN.²⁶

The "meeting" and the President's decision

Before the 3 October 1993 firefight in Mogadishu and 93 U.S. casualties that resulted from it, policy decisions on Somalia were formed largely through Department of State "Deputies" interagency committee meetings. Typically, those proposals that emerged were presented to the "Principals" committee for decision. With concurrence from the National Security Advisor, Ambassador Albright then executed the policy decisions accordingly at the UN. If there were any concern that a particular issue fell outside existing guidelines from the President, either Mr. Lake, Ambassador Albright, or

Secretary Christopher consulted with Mr. Clinton. After the bloody fight on 3 October, the process changed.

On October 5, subsequent to the unconvincing testimony to Congress on U.S. policy in Somalia by Christopher, Aspin, and Lake, President Clinton called for a meeting with his advisors the following day. Included were the Vice President, National Security Advisor Lake, Secretary Christopher, Secretary Aspin, Acting Chairman of the Joint Chiefs of Staff Admiral Jeremiah, Ambassador Albright, Special Envoy Ambassador Oakley, Deputy Chief of Mission for the U.S. Liaison Office in Mogadishu Walter Clarke, and USCENTCOM Commander in Chief General Hoar. The meeting lasted eight hours. The President came to the meeting with no decision in mind. He wanted to hear the thoughts of his principal advisors.²⁸

Three options were shaped at the 6 October meeting. The first option was to “stay the course.” This would give UNOSOM II the greatest chance for success, and show determination and commitment to the UN. Of course, the “down side” to this option was American dissatisfaction and congressional scrutiny. Since Congress had the “power of the purse,” continuing the current policy in Somalia would be a considerable risk.

The second option considered was an immediate withdrawal of U.S. troops from Somalia. Much of American public opinion and many in Congress favored this course. But an immediate pullout would spell failure for the UN mission, and damage U.S. credibility throughout the world.

The third option – the one that President Clinton chose – was to seek a diplomatic settlement, with a phased U.S. withdrawal. The policy would allow for UNOSOM II success by giving the UN time to seek replacement forces and capabilities. Importantly,

it would calm American anxiety over the exit strategy from Somalia. This option was strongly argued during the meeting by Admiral Jeremiah and Ambassador Oakley.

The next day, President Clinton met with leaders of the Congress to brief them on his Somalia exit strategy, and he later made an address to the nation to explain it to the people. In his address, he reiterated the humanitarian reason for supporting the UN involvement in Somalia. He announced a pullout date of 31 March 1994, and explained that an immediate withdrawal would doom the mission there. Finally, the President announced the deployment of additional troops in order to provide protection for troops already in Somalia, and allow for their safe redeployment.

The outcome...

The President's decision to conduct a phased withdrawal while seeking a diplomatic solution led to short-term success. Importantly, sending Ambassador Oakley to Somalia was a unilateral U.S. effort and clearly outside the parameters of the UN. Although Secretary-General Boutros-Ghali and Admiral Howe were angered by the Clinton initiative, their concerns diminished when Ambassador Oakley orchestrated a release of hostages – and a cease-fire – only days after his arrival in Somalia.²⁹ U.S. forces withdrew on schedule from Somalia. Unfortunately, UNOSOM II was inept in filling the void, and the mission eventually left Somalia without accomplishing its mandate.

The appointment of Ambassador Oakley and the announcement of a pullout date satisfied the American public. Oakley was a proven performer in Somalia and enjoyed high regard among the Members of Congress. Although some in Congress held for a 31

January 1994 pullout deadline, the majority allowed for 31 March as the President requested.

So, although the President tried to exit Somalia “gracefully,” the damage to U.S. credibility worldwide was significant. UNOSOM II ended in failure. It was a setback to the UN and our relationship within that important organization. The most poignant aspect of the decision-making process to exit Somalia was the lack of consultation with Congress by the Executive. Subsequent to the deployment of UNITAF, there was no significant communication to Congress on policy changes. Multiple UN Resolutions – some involving significant changes in the use of military force – were passed, put into effect, and executed in Somalia by U.S. troops. It was not until the bloodbath on 3 October that Executive-led consultation with Congress resumed.

THE COMPREHENSIVE TEST BAN TREATY; ANOTHER LESSON IN CONSULTATION

On October 13, 1999, the U.S. Senate rejected the Comprehensive Test Ban Treaty (CTBT) by a vote of 51-48. This marked the first time that a security-related treaty had been defeated since the Treaty of Versailles nearly 80 years ago. President Clinton joined leaders from around the world in condemning the Senate’s action. The first world leader to sign the Treaty in 1996, the President declared that the CTBT was one of his administration’s highest priorities, and that he was “prepared to lead the world in a sustained effort to achieve the test ban.”³⁰ Most foreign policy experts agree with an editorial in *The Economist* that the defeat of the treaty was a “humiliation for the Clinton administration, a pyrrhic victory for the Senate, and a disaster for America’s foreign-

policy making process.”³¹ But why did the Senate reject the treaty? What had gone wrong?

Some argue that the Senate Republicans demonstrated “militant isolationism” and “political partisanship.” Senator Jesse Helms repeatedly stated that the CTBT was a low-priority item and would only receive consideration after the committee had voted on two unrelated sets of agreements not yet submitted by the administration: the 1997 amendments to the ABM Treaty, and the Kyoto Protocol on climate change. This logjam persisted for nearly two years until July 1999, when all 45 Democratic Senators signed a letter urging Helms to conduct hearings on the CTBT and report it to the full Senate for debate. On October 1, a unanimous consent agreement was reached under which the Senate would bypass the Foreign Relations Committee and vote on the CTBT after only 18 hours of debate.³² Under the terms of the agreement, the Republicans and Democrats were limited to one amendment to the resolution of the ratification, which had the effect of curtailing the administration’s ability to craft a resolution that would address concerns voiced by some of the senators.

Before discussing the issues central to the debate, it is important to understand how the administration reasoned that the CTBT would enhance our national security. First, it believed that the treaty would allow the U.S. to maintain a safe and reliable deterrent. Second, the administration felt that the treaty would constrain “vertical proliferation,” defined as the development of more advanced nuclear weapons by declared nuclear-weapon states. Third, the treaty would constrain “horizontal proliferation,” or the spread of nuclear weapons to states not currently in possession of nuclear weapons. Fourth, the CTBT would strengthen the nuclear Non-Proliferation Treaty (NPT) and thus serve as the

quid pro quo to entice nations to agree to an indefinite extension of the NPT in 1995.

Fifth, the CTBT would improve the ability of the U.S. to detect and deter nuclear explosive testing. Sixth, U.S. ratification would encourage other countries to ratify. Finally, the CTBT would establish an international “norm” against testing which would constrain non-signatory nations from testing nuclear weapons.³³

During the hearings, the opponents voiced two main concerns. The first was whether or not the U.S. could effectively verify that countries were adhering to the CTBT. The second was whether or not the U.S. could maintain a safe and reliable nuclear arsenal solely through its Stockpile Stewardship Management Program (SSMP). Testifying before the Senate Armed Services Committee, Secretary of Defense William Cohen, Chairman of the Joint Chiefs of Staff General Henry Shelton, and former Chairman General John Shalikashvili argued that the U.S. should ratify the CTBT with the six safeguards that President Clinton established in August 1995 as conditions for U.S. entry into the test ban. Of particular importance was the allowance of the U.S. to withdraw from the treaty under the standard “supreme national interests” clause in the event that the Secretaries of Defense and Energy could no longer certify that a weapon critical to the U.S. nuclear deterrent was safe and reliable. With respect to verification, the witnesses argued that even though some low-yield nuclear tests might go undetected, such tests are not militarily significant.³⁴

These views were challenged by former Secretary of Defense James Schlesinger who argued that, in the absence of underground nuclear testing, confidence in the safety and reliability of the U.S. nuclear arsenal would inevitably decline.³⁵ This view was supported by Henry Kissinger, who noted that the computers envisioned to complete the

nuclear simulations – as part of the SSMP – would not be available for almost another decade and that the directors of the weapons laboratories, charged with the duty to administer these tests, were highly ambivalent in their testimony before the Senate Armed Services Committee.³⁶

On verification, the U.S. is currently unable to detect explosions below a few tons of yield. Furthermore, signatory countries to the CTBT can declare 50-square kilometer areas “off limits” to inspectors. These conditions fell short of convincing some senators that CTBT is verifiable.

Regarding enforcement and proliferation, some senators joined Senator Roberts, who argued that the CTBT would not stop or slow down the development of nuclear weapons if a nation deemed these weapons to be vital to their national interests.³⁷ Clearly, he was referring to rogue states such as Iraq, North Korea, Libya, and Iran; these states seldom adhere to “international norms.”

Senator Richard Lugar pointed out another flaw in the treaty, “Russia believes hydro-nuclear activities and sub-critical experiments are permitted under the treaty. The U.S. believes sub-critical experiments are permitted but hydro-nuclear tests are not. Other states believe both are illegal.”³⁸

Realizing that there would not be a two-thirds approval vote for CTBT ratification, Senators Daschle and Lott endeavored to work out an agreement to postpone the vote and avoid a humiliating blow to U.S. credibility abroad. Senator Lott said he was willing to put off the vote if the President requested the delay and agreed not to bring up the CTBT during the remainder of his presidency. Clinton agreed to request the delay, but he was not willing to rule out the option of resubmitting the treaty before leaving office.

Because the Senate rules required all 100 senators to agree to change the original consent agreement in order to postpone the vote, the postponement failed, and the treaty was rejected. Partisan politics? Maybe, but legitimate concerns about the CTBT were raised by reputable people. One point is certain: consultation by the administration with Congress on the CTBT was nearly nonexistent until just days before the ratification vote.³⁹

FROM MISCALCULATION TO CONSULTATION; “Partisanship” to “Partnership”

What we have seen in the formulation and conduct of U.S. foreign policy in the Clinton administration – as demonstrated by the two issues in this paper – is a lack of consultation by the Executive. In the Somalia case, Congress approved the employment of U.S. troops in support of a UN effort. But when the organization and scope of the operation changed, and the conditions originally understood and “blessed” by Congress changed, the administration failed to inform Congress. It was not until the Congress insisted on hearings – in the aftermath of American deaths in Somalia – that the Executive explained the changes and asked for Congressional support to extend the enabling resolution.

In the case of the CTBT, the Clinton administration intentionally negotiated the treaty without congressional participation or consultation, even though a precedent of appointing legislators as members of negotiating teams to create bipartisan “partnership” in the conduct of foreign policy had been set by previous presidents ever since WW II. For example, the Carter administration invited 26 senators (14 Republicans and 12

Democrats), including supporters and critics, to “sit in on the SALT II arms negotiations in Geneva.” The Reagan administration accepted a formal Senate Arms Control Observer Group that became a prominent feature of treaty making. This group fell into disuse early in the Clinton administration.

One might point out that although the Constitution compels the Executive to consult the Legislative, the reverse is also true. Yes, but when one considers the consequences of failed U.S. foreign policy, the Executive clearly suffers the humiliation of credibility loss. It is the Executive, despite the separation of powers, whom global leaders look to for leadership and cooperation. It is the Executive, then, who needs to ensure that sufficient consultation is done to get the advice and consent of the Congress. If not, “fait accompli” or miscalculation is the result. If it is miscalculation, the Executive’s credibility suffers, and so too does our foreign policy.

In the end, I think our founding fathers would be pleased to see the Congress use its constitutional power to remind the administration of its obligation to seek advice and consent, despite the humiliation of damaged foreign policy. And maybe it is a good example, not only to Americans, but also to the world, that our system of government – our separation of powers – works.

ENDNOTES

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- ¹ David M. Abshire, *The Washington Papers: Foreign Policy Makers: President vs Congress*, The Center for Strategic and International Studies (Georgetown University, Washington, D.C.) Vol VII: 8.
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